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09/881,237	06/15/2001	William George Bickel	•	7545
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ANDREW T. PROKOPETZ			EXAMINER	
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DURHAM, NC				
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Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applications Application No. BICKEL ET AL.			/\\				
## Deficie Action Summary Examiner		Application No.	Applicant(s)				
Nini F. Legesse 3711	Office Assistant Commencers		BICKEL ET AL.				
Provide for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisors of 3 °C R* 1.136(a). In role word, however, may a ruply be finely filed Extensions of time may be available under the provisors of 3 °C R* 1.136(a). In role word, however, may a ruply be finely filed If the period for ruply appointed above is less time interty (30) stays, a ruply with the statutory minimum of hithir (30) stays will be considered finely. If the period for ruply appointed where is less time interty (30) stays, a ruply with the statutory pressed will appear and in all application is become ABANDONED (30) stays will be considered finely. If the period for ruply is appointed above is less time interting day and will application to become ABANDONED (30) stays. A ruply within the statutory period will apple and will application to the stay of the communication of the communication of the communication of the communication is period to ruply within the statutory flow, ruply reduced any search patient turn adjustment. See 37 °C R* 1,704(8). Status 1)⊠ Responsive to communication (s) filed on 15 June 2001. 2a) This action is FINAL. 2b)☑ This action is non-final. 3) Since this application is in condition for allowance except for formal malters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queryle, 1935 °C.D. 11, 453 °O.G. 213. Disposition of Claims 4)② Claim(s) 2.13 Is/are pending in the application. 4a) Of the above claim(s)	Oπice Action Summary	Examiner	Art Unit				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. • Setembors of them may be available under the provisions of 37 CPR 1.38(s), in ne event, however, may a reply be limby filed • Statusion of them may be available under the provisions of 37 CPR 1.38(s), in ne event, however, may a reply be limby filed • If the period for reply a specified above, he maximum istalutory period will apply and will expire SIX (s) MONTES from the mailing date of this communication. • If NO period for reply a specified above, he maximum istalutory period will apply and will expire SIX (s) MONTES from the mailing date of this communication. Any reply revised by the SIX date the first home manimum istalutory period will apply and will expire SIX (s) MONTES from the mailing date of this communication, owned it may filed, may recise a reply secure of the communication, owned it may filed, may recise a reply secure of the communication, owned it may filed, may recise a reply secure of the communication, owned it may filed, may recise a reply secure of the communication, owned it may filed, may recise a reply secure of the communication of the communication, owned it may filed, may recise a reply secure of the communication of the communication of the communication, owned it may filed, may recise a reply secure of the communication of the communication, owned it may filed, may recise a reply secure of the communication of t	<u> </u>						
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Art Unit: 3711

DETAILED ACTION

Applicant's request for Continued Examination is acknowledged in paper no. 11.

Applicant's amendment to the specification and the claims is acknowledged in paper no. 12.

Claim Rejections -35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey (US Patent No. 5,634,856) in view of Turner (US Patent No. 5.575,473).

Rainey discloses a lightweight practice bat (column 1, line 6 indicates that it can be

Art Unit: 3711

used in baseball) comprising:

- A hollow open-ended outer tube of uniform inner and outer diameter for its full length (23);
- A hollow handle of uniform inner and outer diameter for its full length having an open inner end (46, 48) and a closed outer end (referring to Fig. 2, the handle is considered to be closed at the outer end because plug 32 is provided in the handle);
- A solid plug affixedly attached within an outer end of said hollow outer tube opposite to the handle (28); and
- A hollow sliding inner tube positioned inside and guided solely by said hollow outer tube (in column 3, lines 23-25, it is indicated that the striking member 30 may be a bearing ball element. From this it can be concluded that the sliding element could be any shape including a tube. In addition, in Fig. 3, item 42 is shown as a sliding tube).

Rainey discloses the invention as recited above but fails to explicitly teach the use of an end cap. However Turner is one example that teaches the use of end caps on sporting devices (for example refer to item 23 on Fig. 5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an end cap as taught by Turner in the Rainey device in order to promote safety by covering sharp edges of devices.

Art Unit: 3711

Claims 3, 5-9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Piazza (US Patent No. 3,578,801).

Rainey in view of Turner fails to explicitly teach the hollow tube, the inner tube, the plug, and the end cap to be made of plastic. However, Piazza discloses a bat wherein the outer hollow tube is made of plastic (column 1, line 55) and wherein the sliding inner tube is made of plastic (column 1, line states that the sliding element is plastic). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide plastic elements as taught by Piazza in the Rainey device in order to provide a device that is simple, easily and inexpensively manufactured.

With respect to the plug to be made of plastic, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plastic plug, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Tyner (US Patent No. 6,254,498)

Rainey in view of Turner fails to explicitly include a handle that is made of foam rubber. However, Tyner discloses a handle that is made of a foam rubber (column 4, lines 20-21). Thus, it would have been obvious to one of ordinary skill in the art at the time the

Art Unit: 3711

invention was made to provide a handle that is made of a foam rubber as taught by

Tyner in the Rainey's device in order to provide a bat that absorbs shock without

discomfort to the batter as stated on column 4, lines 25-26 of the Tyner's invention.

Response to Arguments

Applicant's arguments with respect to claims 2-13 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-

1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Paul Sewell can be reached on (703) 308-2126. The fax phone number for

the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (703) 872-

9301.

NFL

09/01/03

Paul T. Sewell
Supervisory Patent Examiner

Page 5

Group 3700